

# Exhibit 4

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii Citizen, ) CIVIL NO. 03-00385SOM  
Plaintiff, )  
vs. )  
HAWAII EXPRESS SERVICE, INC., ) - VOLUME 4 -  
et al., )  
Defendants. )  
\_\_\_\_\_)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing on  
Thursday, March 2, 2006, at 9:24 a.m., at Honolulu, Hawaii,

BEFORE: THE HONORABLE SUSAN OKI MOLLWAY  
United States District Judge

REPORTED BY: STEPHEN B. PLATT, RMR, CRR  
Official U.S. District Court Reporter

APPEARANCES: TIMOTHY J. HOGAN, ESQ.  
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Post Confirmation trust  
for Fleming companies, Inc.

1 nothing for your business?

2 A. Because under our understanding, it was okay to use, so  
3 we used it. Subsequently by taking out the changes that we  
4 made, it didn't work very well, so we did, in fact, get rid of  
5 it on June 9th.

6 Q. But I'm talking about -- actually, I would like to go  
7 back to March 7th, the day after the jury verdict:

8 Why not just walk into the logistics department, as  
9 the boss, and say, turn it off. We don't need this, because  
10 it's your knowledge and hard work that we make our money with,  
11 not this software that's been nothing but trouble.

12 Why not just shut it off?

13 A. Well, for one thing, I wasn't the president at that time.  
14 I became the president after that, the ending of March. When  
15 I got on board, it already -- we were already using it. And  
16 my assumption is that it was working -- you know, we have to  
17 have a way to capture data. So we were using it.

18 We thought we were okay by going back to the  
19 original. Subsequently it didn't work that well with taking  
20 out the -- basically, improvements. So we did look for  
21 something else. And once we switched, yeah, we were done with  
22 it.

23 Q. But on April 1st you were the president of the Hawaii  
24 division?

25 A. Correct.

1 Q. And you said Mark Dillon didn't use it?

2 A. He didn't use it as we use it. He was the network  
3 administrator, so I'm sure that he was updating or doing what  
4 any IT person needs to do to maintain the database.

5 Q. Well, isn't it true, ma'am, that Mark Dillon was found --  
6 it was found that the changes that Mark Dillon made was found  
7 by a jury in March of 2003, right before this period started,  
8 to have been infringement?

9 A. Yes.

10 Q. So, would it be fair to say that he used it for  
11 infringement?

12 A. No, that's not what I'm saying. Don't mis- -- don't turn  
13 my words around.

14 Q. But what was he doing with it? He was developing  
15 Mr. Berry's database without his permission; correct?

16 A. I don't think that -- I mean... he -- he updated and made  
17 changes, yes, to the database.

18 Q. Yes. And those were found to infringe. That's your  
19 understanding?

20 A. Yes.

21 Q. Did you make changes to the database?

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22 A. I did.

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23 Q. You did?

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24 A. Yes.

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25 Q. You believe that those changes were not infringement?

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1     A.     I soon found out that it was infringement, yes.

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2     Q.     So your use of the database for work was also to change  
3     the database; is that correct?

4             MR. BAUMANN:  Objection, Your Honor; vague as to  
5     period of time.  And it's irrelevant, frankly, to the damage  
6     phase.

7             MR. HOSODA:  Join, Your Honor.

8             THE COURT:  I'll allow it.

9             Go ahead.

10            THE WITNESS:  Can you restate it, please?

11     BY MR. HOGAN:

12     Q.     So, your use of the database was -- for work was also to  
13     change the database; is that correct?

14            MR. HOSODA:  Again, Your Honor, objection as to  
15     time?

16            THE COURT:  I'll allow this.

17     A.     I changed the database, yes, in order to operate, because  
18     we were unable to get ahold of Mr. Berry.

19     BY MR. HOGAN:

20     Q.     What did you do to try to get ahold of Mr. Berry?

21     A.     I attempted to call on various phone numbers that he had  
22     left with us.

23     Q.     Did you ever ask Mr. Smith to get in touch with me so you  
24     could find Mr. Berry?

25            MR. BAUMANN:  Again, I object --

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I, Stephen B. Platt, Official Court Reporter,  
United States District Court, District of Hawaii, do hereby  
certify that the foregoing is a true and correct transcript of  
proceedings before the Honorable Susan Oki Mollway, United  
States District Judge.

/s/ Stephen B. Platt

THURSDAY, APRIL 27, 2006

STEPHEN B. PLATT, CSR NO. 248